



## **Office of the City Auditor**

### **Public Notices and Agendas, Legal Publications, and Minutes Report No. 0703**

November 30, 2007

After evaluation of management controls and consideration of other factors, we are electing to terminate this audit. We recommend a new audit to determine compliance with statutory requirements governing public notices, agendas, legal publications, and minutes be considered when City staff has had sufficient time to assimilate changes in procedures and regulations.

#### **CITY COUNCIL**

Mayor  
Mary Manross

Council  
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Wayne Ecton  
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November 30, 2007

To the Most Honorable Mary Manross, Mayor  
and Members of the Scottsdale City Council

Transmitted herewith is a report on the preliminary work completed for the proposed audit on compliance with statutory requirements governing public notices, agendas, legal publications, and minutes. After evaluation of management controls and consideration of other factors, we are electing to terminate this audit. Our recommendation is to revisit the compliance question in a future year.

On a closely related point, City Council may want to consider providing direction to the City Manager and City Attorney to research and recommend an action that can be taken to ensure that all City of Scottsdale entities follow Arizona's Open Meeting Law. During the preliminary survey, we inquired about two entities (the Municipal Property Corporation and the Scottsdale Preserve Authority) which, according to staff, voluntarily comply with Open Meeting Law. According to outside legal counsel, these entities are not required to comply. Mandating compliance of all entities approved or established by the City Council, regardless of the independent appointment of Board and Directors, would coincide with the City's desire to "exceed state laws concerning open meetings and transparency of actions" as reflected in City Code, Section 2-51.

We would like to thank the City Manager, City Clerk, City Attorney, as well as staff throughout the organization that responded to questions related to Open Meeting Law. Their cooperation and assistance during the audit was an important factor that allowed us to complete our work.

If you need additional information or have any questions, please contact me at 480-312-7756.

Respectfully submitted,

Cheryl Dreska, CPA, CIA, CFE, CGFM, CISA, CISSP  
City Auditor

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## EXECUTIVE SUMMARY

An audit of the City's compliance with statutory requirements governing public notices, agendas, legal publications, and minutes was included on the Council approved 2007 Audit Plan. In July 2007, we initiated preliminary survey work and after evaluation of management controls and consideration of other factors, we are electing to terminate this audit. Our recommendation is to revisit the compliance question in a future year. More detail on the work done to reach this conclusion can be found on pages 8-11.

## BACKGROUND

In 1962, the Arizona Legislature adopted Arizona Revised Statutes (ARS), §38-431, *et seq.*, commonly referred to as Arizona's Open Meeting Law. When enacting these new regulations, the Legislature declared:

*It is the public policy of this state that proceedings in meetings of governing bodies of the state and political subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this act that their official deliberations and proceedings be conducted openly.*

**SOURCE:** "The Arizona Open Meeting Law" - The Arizona Ombudsman, April 2007.

Over the last 45 years, the legislation has been amended multiple times. In 1978, for example, the Legislature, in response to a series of court opinions that narrowly construed the intent of the regulations, added the following statement in an effort to reiterate legislative intent:

*It is the public policy of this state that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided. Towards this end, any person or entity charged with the interpretation of this article shall construe any provision of this article in favor of open and public meetings.*

**SOURCE:** "The Arizona Open Meeting Law" - The Arizona Ombudsman, April 2007.

In recent years, amendments have tightened posting deadlines and required public bodies with an Internet presence to post information such as meeting notices, agendas, and minutes on the Web. Most recently, the Legislature enacted legislation that defines subcommittees and advisory committees to clarify the intent that these groups are public bodies. As part of this legislation, these bodies must now take minutes and make the information available on the Web if there is an appropriate Web site.

## Arizona's Open Meeting Law

Arizona's Open Meeting Law requires that all meetings of a public body, with the exception of executive sessions, must be open to the public to allow anyone interested in the deliberations to attend and listen. The law also requires that all legal actions of the public body occur in a public meeting. To ensure that a quorum of the public body does not communicate through e-mail, facsimile machine, or other technological device, an amendment was added in 2000 to clarify the definition of a meeting:

*The gathering, in person or through technological devices, of a quorum of members of a public body at which they discuss, propose or take legal action, including any deliberations by a quorum with respect to such action.*

**SOURCE:** "The Arizona Open Meeting Law" - The Arizona Ombudsman, April 2007.

To provide the public with an opportunity to attend a meeting of the City Council or any of the Boards or Commissions, Arizona's Open Meeting Law requires at least twenty-four hours advance notice. There are three exceptions to this requirement:

- In the case of an actual emergency, a meeting may be held with notice given appropriate under the circumstances.
- If the public body will consider ratification of a prior action taken in violation of the Open Meeting Law, then notice must be given at least seventy-two hours in advance of the meeting.
- A properly noticed meeting may be recessed and resumed with less than twenty-four hours notice if, in the initial session of the meeting, the public is given notice as to the time and place where the meeting will be resumed. To be valid, the notice must be given before the meeting is recessed.

If a public body will meet on a regular day, place, and time during a specific calendar period, then advance notice of all meetings can be provided to eliminate the need to post each individual meeting. Other requirements such as the availability of an agenda at least twenty-four hours prior to each meeting must still be followed.

The process to provide public notice consists of two steps. First, a disclosure statement must be filed with the Office of the City Clerk indicating where the notice will be posted. Second, notice of the meeting must be posted in the designated location(s).

To appropriately inform the public, the notice must include the name of the public body, date, time, and place with the specific location such as the street address and room number or other details necessary to locate the meeting. In addition to the notice, an agenda of items to be considered must be provided or information must be given on how to obtain a copy of the agenda.

If an executive session is called, the notice must state the specific provision that authorizes the executive session. This means specific reference to the numbered paragraph of the subsection of the ARS and not just a general reference or use of a standard form notice that outlines all applicable provisions.

### ***Preparation of Agendas***

Arizona's Open Meeting Law requires preparation of an agenda which includes the specific items to be addressed at the meeting. Broad phrases such as "old business" or "other matters" are not considered appropriate agenda items because the information does not facilitate a decision on the usefulness of attending the meeting. The agenda must be available twenty-four hours prior to the meeting; this can be accomplished by including it with the posting of notice or by adhering to the process of distribution set out on the notice. If a consent agenda will be used to save time, the matters to be considered should be fully described and the public should be provided information on how to obtain more detail on the matter listed.

Only items listed, and other matters related to those items, on the agenda may be discussed during a meeting. This means that the best practice is, when an item not listed is brought up, to defer discussion and decision to a later meeting where it can be specifically listed.

### ***Minutes***

Minutes must be taken at all public meetings and executive sessions. For public meetings, the public must have access, in a form readily accessible, to the draft minutes or a recording of the meeting within three working days after the meeting. This means the availability of a recording within the stated timeframe would be sufficient if the meeting is taped. Effective September 2007, subcommittees and advisory committees must take minutes of meetings (or record the meeting) and within ten working days after the meeting, post on the Web site a statement describing legal action, if any, or a recording of the meeting.

Minutes must include the date, time, and place of the meeting; the members present or absent; and a general description of the matters considered. Additionally, they must reflect an accurate description of legal actions considered or taken and the names of the persons proposing such action.

### **City Code and Regulations**

In 2006, as part of the initiative to develop and document an Ethics policy for the City, the City Council adopted, by ordinance, the following policy statement:

*The Citizens of Scottsdale expect and deserve open government. The City Council has adopted a formal goal of Open and Responsive Government: make government accessible, responsive and accountable so that decisions reflect community input and expectations.*

*. . . Therefore, City officials shall conduct themselves in a manner that fully adheres to and preferably exceeds state laws concerning open meetings and transparency of actions.*

**SOURCE:** City Code, Section 2-51.

To set Citywide policy and procedures for compliance with Arizona's Open Meeting Law, the City Manager, in partnership with the City Clerk and City Attorney, directed the implementation of AR 121, Public Notices and Agendas, Legal Publications, and Minutes, in the later part of calendar year 2005. This AR has been modified several times to clarify procedures and incorporate changes in statutory provisions. The most recent update was September 1, 2007.

While not specifically addressed in Arizona's Open Meeting Law, the City has taken steps to comply with requirements set out in the Americans with Disabilities Act (ADA) of 1990. Provisions in AR 121 require incorporation of statements regarding the requirement that reasonable accommodations be made for persons with a disability. The City's ADA Coordinator is the technical resource and primary point of contact for ADA related accommodations.

### **Open Meeting Law Applicable to City Entities**

The City currently has 23 active Council appointed Boards and Commissions comprised of 165 Scottsdale residents. Each Board and Commission has a designated Staff Representative who is responsible for ensuring that documents (meeting notices/agendas, marked agendas, and minutes) conform to statutory requirements.

In addition to Council appointed Boards and Commissions, there are other City related entities that must comply with Arizona's Open Meeting Law. This group includes the various Community Facilities Districts and the Industrial Development Authority (IDA). Not included within this group are the Municipal Property Corporation (MPC) and Scottsdale Preserve Authority (SPA). According to outside legal counsel, these two entities are not required to comply with Arizona Open Meeting Law.

### **Open Meeting Law Training**

City Council and members of Council appointed public bodies are trained on Arizona's Open Meeting Law as part of the City of Scottsdale Public Service Ethics Program (Resolution No. 6879 approved May 2, 2006) and the City's Code of Ethical Behavior (Ordinance No. 3675, effective July 1, 2006). In addition to formalized training, attendees are provided with a copy of the Board and Commission Member Tool Book. This document provides information on the duties of Staff Representatives as well as time sensitive posting requirements.

This training is provided to the Mayor and members of City Council no later than thirty days of being sworn into office. City officials (Board, Commission, and task force members) are trained no later than ninety days of being sworn into office. Applicable training is provided annually thereafter for as long as the member serves the City.



## **OBJECTIVES, SCOPE, AND METHODOLOGY**

The objectives set out in the Audit Plan were to:

- Evaluate the internal controls to ensure that sufficient activities are in place to provide reasonable assurance of compliance with AR 121 and Arizona's Open Meeting Law.
- Determine if the procedures outlined in AR 121 are consistently followed by City Council and Council appointed public bodies including their respective committees, subcommittees, and advisory committees.

This audit was proposed to evaluate the City's compliance with ARS, §38-431, *et seq.*, and AR 121 as it relates to preparation of public notices, agendas, legal publications, and notices. The scope did not include an evaluation of compliance with provisions governing executive session restrictions. As such, we did not evaluate the control environment or control activities in place to ensure that executive session discussions were limited to posted subject matter.

Because work was terminated after the conclusion of preliminary survey, we did not test City procedures in place to ensure compliance with ADA requirements nor did we verify that the listing of committees, subcommittees, or advisory committees posted on the City's Web site at the start of our work accurately reflected all of the groups that should be adhering to Arizona's Open Meeting Law. Finally, we did not evaluate the adequacy of notices, agendas, or minutes; work was limited to determining if a process was in place to prevent or detect issues with non-compliance. If the audit had not been terminated, we may have become aware of issues that should have been disclosed.

In order to complete the preliminary survey, we:

- Attended a seminar titled, What You Need to Know About Public Records and Open Meetings, presented by Lorman Education Services.
- Obtained copies of all approved versions of AR 121 (approved December 2005, updated September 2006, April 2007, and September 2007), reviewed each version to identify changes, and evaluated the adequacy of procedures outlined.
- Reviewed ARS, §38-431, *et seq.*, including newly enacted revisions that would become effective September 19, 2007.

- Obtained and reviewed:
  - Documentation on Arizona's Open Meeting Law prepared and distributed by the Arizona Ombudsman - Citizen's Aide dated April 2007
  - Procedures developed and used by City Clerk staff to ensure that all public meeting posting requirements are met
  - The written opinion provided to the City Clerk from outside legal counsel to the Industrial Development Authority setting out the requirement to comply with Arizona's Open Meeting Law and the process to be followed should someone desire copies of minutes
  - The contract currently in place for transcription services should there be a need for a third party to take minutes at meetings of Boards, Commissions, or other public meetings
  - Documentation referred to as, "The City's Board & Commission Tool Book"
- Accessed the City's Web site to identify active Boards, Commissions, Committees, and Subcommittees.

We interviewed various staff, including but not limited to:

- Staff Representatives/Liaisons for three Commissions (Airport Advisory Commission, Human Relations Commission, and Transportation Commission)
- The City Clerk and City Manager
- The Assistant to Mayor/Council who facilitates and coordinates Ethics and Open Meeting Law training for City officials, General Managers, Staff Representatives/Liaisons, and Board and Commission members
- The City Attorney and a Senior Assistant City Attorney
- The City's ADA Coordinator

At the conclusion of background and information gathering, we developed a Risk Matrix depicting the risk of undetected non-compliant activity in relation to management developed controls.

Audit work was conducted in accordance with generally accepted government auditing standards as they relate to expanded scope auditing in a local government environment and as required by Article III, Scottsdale Revised Code, Section 2-117, *et seq.* Survey work took place from July 2007 through August 2007 with Lisa Gurtler conducting the work.

## **PRELIMINARY SURVEY**

Preliminary survey for this audit started in July 2007. The purpose of this phase was to:

- Obtain sufficient background information.
- Identify and evaluate:
  - Management control and the associated risk of non compliant activity.
  - Criteria used to assess testing results.
- Determine the need for additional audit work based on conditions noted during the survey.

In our view, management has implemented a control structure sufficient to provide reasonable assurance of compliance or timely detection of non-compliance. (Appendix A sets out the results of this evaluation.)

We also became aware of conditions that, in our view, impact the value of moving forward with this audit. The conditions include:

- AR 121 was first approved in December 2005 and since that time has been updated twice; a third update would be released in September 2007 while we were completing fieldwork.
- New legislation, effective September 19, 2007, would extend certain requirements not previously applicable to committees, subcommittees, and advisory committees established by a public body.
- Updated training was scheduled to begin in September 2007 and rolled out to City officials, General Managers, Staff Representatives/Liaisons, and Board/Commission members with an estimated completion date of November 2007.
- In July 2007, the Information Systems Department (IS) began implementation of a Web content management system that will effectively shift Web site management responsibilities from a small cross-departmental technology team (INET) to non-technical departmental staff.

With the current control environment; multiple versions of regulations in effect during the proposed period of testing; revisions to statutory requirements; updated staff training; and changes in procedures, we believe there is little added value in continuing this audit. We recommend that a new audit be considered when City staff has had sufficient time to assimilate changes in procedures and regulations.

## APPENDIX A – EVALUATION OF MANAGEMENT CONTROL

A sufficient control structure should exist to provide assurance of compliance with appropriate statutory regulations. To be considered sufficient, the following elements should be present:

- **Control Environment** - Management is aware of the need for a control system and communicates this need with an attitude and awareness that sets the tone for the organization.
- **Risk Assessment** - Relevant risks that impact compliance are identified, evaluated, and used as the basis for determining how to manage risk.
- **Control Activities** - Policies and procedures are developed and documented.
- **Information and Communication** - Usable, relevant information is captured and exchanged in a form and time frame that allows employees to effectively carry out their duties.
- **Monitoring** - Periodic assessments of the control structure are undertaken to identify what is working and what needs to be improved or modified.

It is apparent from a review of City Code that the City Council has set the appropriate tone for the organization. Relevant text from Ordinance No. 3675 adopted May 2006 is set out below:

*. . . city officials shall conduct themselves in a manner that fully adheres to and preferably exceeds state laws concerning open meetings and transparency of actions. Indeed, city officials are encouraged to employ a "mindset of openness" in conducting the affairs of the city and should be cautious before voting to hold a portion of a meeting in executive session.*

*The city attorney is encouraged to vigorously promote and enforce state laws regulating open meetings, and be proactive and assertive in ensuring strict adherence to those laws reflecting the city's "mindset of openness."*

Similarly, there is evidence that City management strives to set the appropriate tone regarding compliance. This expectation has been communicated through the following policy statement incorporated into AR 121:

*The City of Scottsdale shall comply with the Arizona Open Meeting Law by ensuring that all public notices/agendas, marked agendas, minutes, and legal publications of the City Council and other Council-appointed public bodies of the City, as well as their respective committees and subcommittees, conform to the standards set forth in this administrative regulation.*

Results of interviews conducted with the City Manager, City Clerk, City Attorney, an Assistant to Mayor/Council, and three Staff Representatives/Liaisons indicate a strong organizational commitment to timely posting of meeting notices and marked agendas as well as timely preparation of minutes and proper publication of legal notices.

For control activities:

- Citywide policies and procedures governing legal postings have been developed, in partnership, by the City Manager, City Clerk, and City Attorney. This document (AR 121) is updated to incorporate changes to City processes and/or state law requirements.
- Departmental specific policies and procedures have been developed and implemented by the City Clerk outlining the steps to be taken to process and post notices/agendas, marked agendas and minutes. In addition, the process is documented in a flowchart and procedural checks such as document counts, date stamps, evidence of review (i.e., initials of the reviewer) and a central e-mail folder to track postings have been implemented. Finally, cross-training has occurred with at least three staff in the City Clerk's Office who are trained on posting requirements.

To ensure that there is an organizational understanding of the importance of compliance, an Assistant to Mayor/Council and City Attorney staff facilitate and coordinate Ethics and Open Meeting Law training for City officials and Board/Commission members. Similar training, in conjunction with the City Clerk, is provided to General Managers and Staff Representative/Liaisons. Updates and reminders are issued by the City Clerk and/or the Assistant to Mayor/Council to applicable Staff Representatives/Liaisons if a point of non-compliance is noted or if there is a change in established practice that needs to be highlighted.

Monitoring of compliance takes various forms. City Clerk staff use a weekly checklist maintained for each known Board, Commission, and Committee to track receipt of documents. An Assistant to Mayor/Council regularly monitors attendance to required Open Meeting Law/AR 121 training of City officials and Board and Commission members.

City Council has set the tone for the organization. City officials (i.e., City Manager, City Clerk, and the City Attorney) have taken appropriate steps to communicate the expectation and to implement activities that monitor compliance.

There is reasonable assurance of compliance with statutory requirements for preparation and posting of notices, agendas, and minutes.

## APPENDIX B – MANAGEMENT RESPONSE



City Manager

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Scottsdale, AZ 85251

To: Lisa Gurtler, City Auditor's Office  
From: Jan Dolan, City Manager  
Subject: Draft Notices and Agendas Audit  
Date: November 30, 2007

Thank you for the opportunity to review and respond to the draft of this audit.

I appreciate your recognition of the strong organizational commitment to timely posting of meeting notices, marked agendas, minutes and proper publication of legal notices. A great deal of credit for this rests with City Clerk Carolyn Jagger, City Attorney Deb Robberson and her staff, Brent Stockwell of the City Manager's staff and the liaisons to the Boards and Commission.

I understand the conditions you cite that lead to your decision to discontinue this audit.

Again, thank you for the opportunity to work with you on this audit and to comment on the draft. We are all committed to adhering to these important laws and regulations and ensuring open and transparent government.

c. City Clerk Carolyn Jagger  
City Attorney Deb Robberson  
CFO Craig Clifford  
ACM Neal Shearer  
Council Liaison Brent Stockwell